



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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Joseph F O'Dea, Jr, Esquire
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ORIGINAL
(Red)

Re Lower Darby Creek Area Superfund Site

Dear Joe

In response to your letter of December 1, I would like to set the record straight and clarify any misunderstandings which may have arisen during my various telephone conversations with Cathy Devlin. EPA is not discontinuing the practice of involving counsel during interviews of former employees as a general rule. As you may be aware, Cathy and I are scheduled to interview a former employee next Monday.

The question of whether or not EPA was prohibited from contacting and interviewing unrepresented non-managerial employees without involving counsel for WMI and/or BFI arose after EPA's investigator inadvertently conducted a couple of interviews of former employees without notifying EPA beforehand, thus preventing coordination with you. Once the interviews were completed and the witnesses had requested that their identities be kept confidential, EPA needed to ascertain whether or not it was obligated to re-interview the witnesses with the involvement of counsel for WMI. Doing so would obviously cause us to reveal the identity of the witnesses. In evaluating this dilemma, I consulted the ABA Monograph.

I agree that you and Jeff Martin have facilitated past interviews of witnesses, especially by locating and prepping the witnesses. EPA will endeavor to continue the practice of coordinating interviews of former witnesses with you and/or Jeff whenever feasible. If you would like to discuss this matter further, please do not hesitate to telephone me.

Sincerely,

Brian M Nishitani
Senior Assistant Regional Counsel

cc Jeffrey N Martin, Esquire